

SOUTHERN DIVISION
NO. 7:09-CR-54-4H
NO. 7:12-CV-16-H

Respondent.

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ORDER

This matter is before the court on petitioner's motion to vacate pursuant to 28 U.S.C. § 2255. The government moved to dismiss, and petitioner responded. This matter was referred to Magistrate Judge Kimberly A. Swank, and a Memorandum and Recommendation ("M&R") was entered on April 14, 2014, recommending that the government's motion to dismiss be granted and petitioner's motion to vacate be denied. Petitioner has not objected, and the time for doing so has expired.

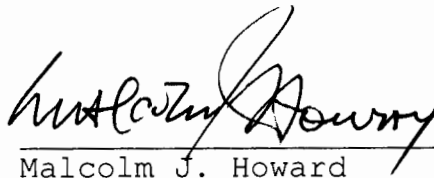
A full and careful review of the M&R and other documents of record convinces the court that the recommendation of the magistrate judge is, in all respects, in accordance with the law and should be approved.

Accordingly, the court adopts the recommendation of the magistrate judge as its own; and for the reasons stated therein,

the government's motion to dismiss is GRANTED, and petitioner's motion to vacate is DISMISSED. The clerk is directed to close the case.

A certificate of appealability shall not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A petitioner satisfies this standard by demonstrating that reasonable jurists would find that an assessment of the constitutional claims is debatable and that any dispositive procedural ruling dismissing such claims is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). A reasonable jurist would not find this court's dismissal of petitioner's § 2255 motion debatable. Therefore, a certificate of appealability is DENIED.

This 7th day of July 2014.



Malcolm J. Howard
Senior United States District Judge

At Greenville, NC
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